

## DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Minutes of a Meeting of the Development Control and Regulation Committee held on Wednesday, 12 October 2022 at 10.00 am at Council Chamber - County Offices, Kendal, LA9 4RQ

### PRESENT:

Mr GD Cook (Chair)

Mr RW Betton	Mr KR Hamilton
Mr RK Bingham	Mr AJ Markley
Mr A Bowness	Mr W McEwan
Mrs HF Carrick	Mr P McSweeney
Mr F Cassidy	Mr FI Morgan
Mr N Cotton	Mr D Gawne
Mr D English	

### Also in Attendance:-

Richard Cryer	-	Lead Officer - Development Control
Paul Haggin	-	Manager Development Control and Sustainable Development
Jayne Petersen	-	Planning Officer
Andy Sims	-	Countryside Access Officer
Ian Blinkho	-	EPW - Lead Lawyer

Public Participation for Agenda Item 8:

Mr Mudge	-	Objector
Mrs Tears	-	Objector
Mr N Edwards	-	Agent on behalf of the Applicant

### **PART 1 – ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS**

#### **58 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Mr J Mallinson, Mr P Turner, Mr D Wilson and Mr M Worth.

#### **59 CHANGES IN MEMBERSHIP**

It was noted that Mr Gawne had replaced Mr Turner as a member of the Committee for this meeting only.

#### **60 DISCLOSURES OF INTEREST**

There were no disclosures of interest made at the meeting.

**61 EXCLUSION OF PRESS AND PUBLIC**

RESOLVED that, the press and public not be excluded during consideration of any items of business.

**62 MINUTES**

RESOLVED that, the minutes of the meeting held on 29 September 2022 be confirmed as a correct.

**63 HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 581025 PARISH OF WINDERMERE: DISTRICT OF SOUTH LAKELAND**

A report was considered from the Executive Director – Economy and Infrastructure. The report advised that an application had been received to divert a section of public footpath no 581025 at Applethwaite Hill in the parish of Windermere.

The Countryside Access Officer made his presentation using plans and photographs to explain the application.

The Chair highlighted that it was not disabled access friendly and asked about a gap in the boundary wall. The Countryside Access Officer explained the work to be undertaken to ensure access for all. Following member questions, it was noted that hedges would be inappropriate alongside the path and that the steps, handrail and path surface would be the responsibility of the Local Authority.

It was moved by Mr Cotton and seconded by Mr Markley that the recommendation as set out in the report be agreed.

The Chair moved to the vote which was cast as follows: 14 members in favour of the motion, 0 against and 0 abstentions.

RESOLVED that, Pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the County Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert a section of public footpath no 581025 from A-B to A-C-D-B as shown on the plan at Appendix A and if no objections are received, the order be confirmed. In the event objections are received and not withdrawn, the matter may be referred to the Secretary of State for consideration

**64 HIGHWAYS ACT 1980 SECTIONS 25 AND 119 - APPLICATION TO REALIGN PUBLIC FOOTPATHS AT DUNNERHOLME GOLF COURSE IN THE PARISH OF ASKAM AND IRELETH: DISTRICT OF BARROW IN FURNESS**

A report was considered from the Executive Director – Economy and Infrastructure. The report advised that an application to divert sections of public footpath no 602061, 602062 and 602068 at Dunnerholme Golf Course in the parish of Askam and Ireleth District of Barrow in Furness was presented to the Committee on 15 September 2021, when it was resolved that an order be made under Section 119 of the Highways Act 1980 to divert those footpaths and that all necessary action be taken to confirm the order. An Order was made on 26 October 2021 and objections were received to the diversion of public footpath no 602068. The scheme had now been revised to exclude any change to the presently recorded alignment of path 602068.

The Countryside Access Officer made his presentation using plans and photographs.

Mr Cassidy who was familiar with the area Moved that the recommendations as set out in the report be agreed. These was Seconded by Mr English.

The Chair moved to the vote which was cast as follows: 14 members in favour of the motion, 0 against and 0 abstentions.

RESOLVED, that

- 1 That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the County Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert:

That section of public footpath no 602061 shown A-B to a new route A-C-B as shown on the plan at Appendix C1 of the report;

That section of public footpath no 602062 shown D-E to a new route D-F-E as shown on the plan at Appendix C2 of the report;

And that all necessary action be taken to confirm the order. In the event objections are received and not withdrawn, the matter be referred to the Secretary of State for consideration.

- 2 That, pursuant to the power set out at Part 2G paragraph 2.1(g) (i) of the County Council's Constitution, the County Council enter into an Agreement under Section 25 of the Highways Act 1980 with the landowner to dedicate that section of public footpath shown A-B-C on the plan at Appendix D of the report.

**65 APPLICATION REFERENCE NO. 1/21/9004. PROPOSAL: AN APPLICATION UNDER SECTION 73 TOWN & COUNTRY PLANNING ACT 1990 TO AMEND CONDITION 2 TO PLANNING PERMISSION 1/18/9006, FOR CONSTRUCTION AND OPERATION OF A BUILDING FOR THE PROCESSING OF WASTE TO PRODUCE REFUSE DERIVED FUEL AND PROCESSING OF CO-MINGLED RECYCLABLE MATERIAL, TO INCLUDE**

**AMENDED PLANS SHOWING THE INCLUSION OF A WATER TANK AS PART OF THE DEVELOPMENT AND TO APPROVE DETAILS OF ARRANGEMENTS FOR DRAINAGE SUBMITTED UNDER CONDITIONS 7, 8, 9, 10 AND 13 OF PLANNING PERMISSION 1/18/9006. LOCATION: HESPIN WOOD WASTE MANAGEMENT PARK, ROCKCLIFFE, CARLISLE, CA6 4BJ**

The order of business was changed. This was the first substantive item to be considered.

A report was considered from the Executive Director – Economy and Infrastructure.

The Manager Development Control and Sustainable Development reminded members that determination of the decision had been deferred at the 29 September 2022 meeting for re-consultation to take place to make it clear to the public that the whole development was being dealt with retrospectively. He advised that although consultation letters had been sent out, the description of how the Council had intended to deal with the application had not been fully explained on the Council's website. He had received correspondence stating that the public may not know the full details if they looked at the website.

Members were provided with the options of deferring the decision again in order that the website was corrected or to determine the decision at this meeting. He confirmed that interested parties knew the details, had been re-consulted advising of the method of proposed determination and the information had been in the public domain other than on the website.

A member asked if the public would have any redress if they had not seen the information on the website. The Planning Lawyer advised on this and asked if the Committee was satisfied that enough public consultation had been carried out.

A member referred to email correspondence about the statutory consultation period being shortened. The Manager Development Control and Sustainable Development considered this to be a separate issue. He reported on the pertinent dates of the consultation period and how they fitted in with publication of the report. He confirmed that all statutory consultees had been re-consulted.

After a member asked if there was a risk that the applicant could appeal on the grounds of non-determination. This was thought to be unlikely.

The Chair asked the Committee to decide whether to defer the decision to a future meeting or to determine it at this meeting.

Mr Markley Moved that the decision be determined at this meeting as the Committee had the information before them. He was unhappy at the amount of late information received the night before the meeting in the Update Sheets and he thought the application needed to be determined. The Planning Lawyer explained that members should be satisfied that there had been adequate consultation. Mr Markley thought this was the case.

It was noted that the decision would be brought to the 1 December 2022 meeting should it be deferred again.

A member asked if the omission of the wording on the website would have a material bearing on the decision. The Planning Lawyer confirmed it would and explained why.

Mr Cotton proposed a deferral of the decision as the first Update Sheet was 120 pages which he hadn't fully read. He talked about transparency of decision making and asked about the risks relating to deferring determination of the decision. The Manager Development Control and Sustainable Development explained that developments of this type often attracted late submissions and it would likely happen at the next meeting if the decision was deferred. He advised that the Applicant may be frustrated at the lack of determination of the decision.

A question was asked on whether the building was in use. A member highlighted that the application had been deferred on four occasions. The Planning Officer gave a synopsis on the reasons for previous deferrals.

Mr Hamilton asked why the Update Sheets were circulated so late, querying the deadlines for submissions. He was concerned that if there was a deferral of the decision, late representations would be received again. He Seconded Mr Markley's Motion.

The submission deadline date for objections was reported. The Chair advised that only one submission was received by the deadline and everything else was received late. He stated that if the application was deferred again he would not accept late submissions.

A member referred to the omission of information on the Council's website, asking if any material matters for consideration had been raised. The Chair reminded members to focus on whether the application should be considered at the meeting. He wanted to ensure that members could read the late submissions in the two Update Sheets and announced that a recess would be held for members to read them.

A member queried why submissions were late. The Chair advised this was at the discretion of the public.

Mr Markley urged consideration of the application as all statutory consultees had been contacted and even though there had been an error on the website.

The Chair put the Motion to the vote which was cast as follows: 7 in favour, 5 against and 1 abstention (Mr Bingham requested his named abstention be recorded). Mr Betton did not vote as he was not in the room during the discussion.

There was a ten minute recess at 10.30am for members to read the Update Sheets (Update Sheet 2 was tabled on the morning of the meeting and included submissions received after publication of the 1<sup>st</sup> Update Sheet the day before the meeting).

After the meeting reconvened, it was clarified by the Planning Lawyer that Mr Betton would be able to vote as the application had not yet been under consideration.

The Planning Officer made her presentation using plans and photographs to explain the application.

Members' attention was drawn to Update Sheet 1. Statutory consultees had confirmed that the development was acceptable. Reference was made to the late submissions with members being advised that the main issues had been addressed in the Update Sheets.

It was noted that filming of the meeting by one of the objectors was allowed during the meeting. This was confirmed by the Planning Lawyer who then clarified for members what decision they were determining at the meeting adding that it was not a retrospective planning application.

Questions from one member included whether the application was acceptable according to the relevant policies and whether consideration had been given to flooding given the climate emergency and possible rising water levels. The Planning Officer talked members through the Flood Risk Assessment work undertaken and considered the development to be acceptable.

Another member asked about tree screening and whether consideration was being given to pushing waste up the waste hierarchy. The Planning Officer talked about future tree planting and that changing and new technology and/or new Planning Policy guidance may affect how similar developments were dealt with in future.

### **Public Participation:**

#### Mr Mudge

Mr Mudge stated that the application had to be decided against the Local Plan and referred to the National Planning Policy for Waste and policy SAP2. He highlighted that appropriate locations should be identified for waste management facilities. He acknowledged that this had been done but referred to Update Sheet 1 where Hespian Wood had not been included in a list identifying suitable locations for new/enhanced facilities. He referred to historical consideration of the site when the Local Plan was written and it was considered unsuitable. This meant the site was not suitable under the Minerals and Waste Plan.

He stated that the development did not comply with the criteria of Policy DC9. The proposal was an RDF facility which did not fit criteria (a) and didn't comply with (e) as it was not a pre-treatment for landfill.

As the development did not comply with DC9 it also didn't comply with policy SAP2. He referred to policy SAP1 which referred to sustainability and did not consider the development to be sustainable as material would be destroyed. He directed members to the CRAIN report which listed policies not complied with or needed further investigation.

He spoke about the recommendation to members being published before the consultation closure date which had been published on the Council's website since

mid-September. It was not correct that it had been changed in October as it had been on the website for some time. The dates had been included in correspondence to residents who may want to object and he had evidence of the dates published on the website. Objections had been submitted on 10 October as questions had been submitted to the Council on 16 September which had not been answered until 6 October. Mr Mudge advised that he had other reasons why the development shouldn't be built but did not have the time although highlighted that the number of HGVs was incorrect in the report.

A member asked Mr Mudge if all of the facts he presented were true, factual and material to the application. Mr Mudge stated that he had evidenced everything in the document from CRAIN. This included the number of HGVs set out in the Planning Officer's report which was incorrect. He referred to the consultation period expiry date of 11 October 2022 which was on the Council's website and had been changed. He considered that the Officer's report was prejudiced

The Chair asked Members to determine the application on the facts available.

### Mrs S Tears

Mrs Tears had attended to let members know how they were viewed by the public. Rockliffe Parish Council was thanked. There was no County Council local member to contact on the matter so residents were working together. Councillor John Mallinson had been contacted but had said that he had a conflict of interest. Residents had been asking why they had not received responses to their questions after contacting members of the Committee. She did not think members had represented residents, been visible, could be trusted or that residents' views had been represented. She thought it looked like members weren't transparent and they had something to hide. Residents' views didn't appear to have been taken on board.

The Chair advised that the Local Member had passed away and due to local government reorganisation there had not been a by election. He explained why members had not responded to lobbying. He advised that any member could comment on a proposal but would be treated as a member of the public under the Public Participation Scheme.

It was established that Mr English had not been actively taking part in the meeting so would abstain from the vote.

### Mr Goodwin (statement read out by the Manager Development Control and Sustainable Development)

In a process not too dissimilar from that granting retrospective permission to the much - opposed and controversial Carlisle Incinerator, an independent report showing multiple errors and failings which have been left uncorrected, the council now seem set on granting its own company retrospective approval for another facility. There is much evidence (expounded in other objections) that this facility is unnecessary, that it has apparently been constructed in breach of planning regulations, is contrary to the Cumbria Minerals and Waste Plan, is not in accordance with residual waste reduction aims nor complies with climate objectives and can be expected to have other harmful environmental and amenity outcomes, including potential fires, problems due to increased traffic, leaks of pollutants,

degradation of local biodiversity etc At a time when the understanding of the Climate Emergency is at the highest it has been, it seems frighteningly irresponsible to be proposing giving retrospective permission to a facility that will, in effect, take the carbon out of a product in which it is currently trapped, turn it into a useable fossil fuel and release it into the atmosphere as greenhouse gases through burning. Such action would contribute to the escalation of climate crisis consequences, endanger the health of nearby populations and people further afield, and further alienate local communities who oppose such 'developments' at a time when we all need to positively engage and work together to meet the climate challenges already on our doorstep.

I ask the council to first of all revisit their procedures and planning processes and consider if permission would be granted to a private citizen in light of the multiple failings mentioned above. I would then ask Council to launch a much-needed review of the Cumbria Minerals and Waste Plan in consideration of new technologies and methods to manage waste more effectively and bring the plan up to date in concert with the urgency demonstrated by the science and the growing expectations of our populations.

It is said that good governance requires consent. Good consent requires openness, honesty and trust. I cannot say I have seen these values demonstrated in these planning procedures and decision-making and hope that this can be remedied. Admitting mistakes and moving forwards together is a strength that can lead to new and better solutions.

Mr Lowe (statement read out by the Manager Development Control and Sustainable Development)

I appreciate the extension to the deadline for consultation on this matter to the 11/10/22 as stated on your website.

As a follow up to my earlier objection (email sent on 13/7/22) to the production of Refuse Derived Fuels and processing of co-mingled recyclable materials on this site, I wish to object to the intention of the Council to apply for retrospective planning permission for the building and water tank.

I reiterate the objections I expressed in my earlier email. First, I object because Cumbria County Council is part of the Zero Carbon Cumbria Partnership that is working towards the shared aim of making Cumbria the first carbon neutral county in the UK, by 2037. This proposal seems completely contrary to the Zero Carbon Cumbria Partnership aim which the Council is saying it is pursuing. Secondly, I object because there is an apparent conflict of interest in the Council's ownership of Cumbria Waste Management Limited, when it is anticipated that the development will send waste to the Carlisle incinerator (Appendix 2 of the 1/18/9006 planning application) and when the Council granted permission for the incinerator that it should not have granted (<https://www.newsandstar.co.uk/news/19252056.cumbria-county-council-admit-error-plans-incinerator-kingmoor-park-carlisle/>). Thirdly, I object because the development is on an important woodland area. The Cumbria Minerals and Waste Local Plan says, "Main concerns are to maintain and enhance



woodlands on the site ...". CMWLP says the woodland area should be maintained and enhanced as a main concern, yet the applicant has removed some of this woodland. Development contrary to the local plan and started without complying with planning conditions should not be rewarded with retrospective permission. Fourthly, I object because This proposal is not sustainable because it prepares materials for their destruction. It therefore cannot accurately be described as sustainable development nor can it be considered part of the circular economy.

In addition to these objections I wish to add that I do not consider them to have been adequately addressed in the report to the committee. The planning application should not go ahead until these matters have been addressed.

#### Mr Edwards on behalf of the Applicant

Mr Edwards invited the objectors to a meeting with the Cumbria Waste Group to talk about their concerns.

The purpose of the planning system was to regulate development and secure the right development in the right place. This development followed those principles. The development brought significant benefits such as reducing the need for fossil fuels. The facility would increase capacity and reduce waste to landfill. This was in line with the County Council's Waste Management policy. Cumbria Waste Group was dedicated to sorting and recycling waste. The development would move waste management up the waste hierarchy. The applicant was passionate about waste management and low carbon development. The development was located on the Hespin Wood site which was the best local site. He referred to policy of DC9 of the Minerals and Waste Local Plan adding that consultees had given a clear indication of the development having no adverse impact. This application had been considered by the Committee in 2018 with all but one member voting to grant planning permission. The Planning Officer was congratulated on her report. He considered the objections to be erroneous.

The Chair asked for assurance from Mr Edwards that Cumbria Waste Management had robust systems in place to ensure that conditions were adhered to and there would be no future retrospective applications submitted. Mr Edwards reported on the impacts of the COVID pandemic which he considered to be extenuating circumstances. He gave assurance that all conditions would be complied with on time.

A member asked about future inspections to ensure environmental impacts would be mitigated. The Planning Officer advised that officers had the power to inspect the development at any time to ensure that planning conditions were being adhered to.

It was raised that the site was established in the 1970s and the principle of development of the site was noted.

The Manager Development Control and Sustainable Development talked about how the application had been considered by members in 2018 and they should consider if anything had changed since then in terms of material considerations and planning

policies. He talked members through the points to consider when determining the application.

It was moved by Mr Markley that the recommendations as set out in the report be agreed as he had listened to everyone and thought Refuse Derived Fuel was a good option. He referred to the energy shortage and thought that efforts should be made to move forward with the new generation of fuel. Mr Hamilton Seconded the Motion.

The Chair moved to the vote which was cast as follows: 12 members in favour of the motion, 0 against and 1 abstention (Mr Bingham). Mr English did not vote.

RESOLVED that,

- 1 That it would not be expedient in the public interest to take enforcement action to remove the building already constructed, because it is substantially in accordance with the recently expired planning permission 1/18/9006 (Appendix 1 of the report) and is acceptable in regard to the policies of the development plan, national planning and waste policies.
- 2 That this planning application, submitted under section 73 to vary conditions on planning permission 1/18/9006, be considered as an application for retrospective planning permission under section 73A of the Town and Country Planning Act 1990.
- 3 That retrospective planning permission is granted for the construction of a building for the processing of waste to produce Refuse Derived Fuel (RDF) and processing of co-mingled recyclable material, erection of water tank, two lagoons and car parking area, subject to conditions in Appendix 3 of the report.

## **66 APPLICATIONS DETERMINED UNDER DELEGATED POWERS**

RESOLVED that, the list of applications determined under delegated powers be noted.

## **67 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS**

RESOLVED that, the list of applications proposed to be determined under delegated powers be noted.

## **68 FORWARD PLAN**

The list of applications to be considered at future meetings was discussed.

RESOLVED that, the Forward Plan be noted

**69 DATE AND TIME OF NEXT MEETING**

The next meeting of the Committee will be held on 1 December 2022 at 10.00am, County Offices, Kendal

**70 UPDATE SHEET PUBLISHED 11.10.22**

The meeting ended at 12.35 pm